

# **Request for Proposals (RFP)**

## **Shoreline Armoring Alternatives Evaluation**

### **Part 1–Project Description**

The Puget Sound Action Team (Action Team) is soliciting bids for a single contract not to exceed \$25,000 to evaluate the effectiveness of small-scale beach nourishment, bioengineering, native plant landscaping and other alternatives to standard shoreline armoring or bulkheading.

Desirable qualifications of the consultant team:

The team should contain disciplines such as coastal engineering, shoreline ecology, coastal geology, coastal policy or other disciplines that demonstrate the firm's ability to evaluate the environmental and structural effectiveness of the subject projects on representative marine shorelines throughout Puget Sound. No member of the consultant team for this project should also have had any contractual relationship with any of the subject projects under evaluation.

Background:

This project will provide needed physical and social science data related to alternatives to conventional shoreline armoring. A report on the effectiveness of existing (previously installed) alternatives to shoreline armoring is necessary for local government planners and permit reviewers to allow alternative projects to be constructed, and for property owners to make informed decisions on the risks and benefits of alternative shoreline treatments. New guidance to local governments from the Department of Ecology for development of updated shoreline master programs recommends a preference for alternatives to hard armoring. A Steering Committee composed of representatives of the Puget Sound Action Team, Department of Ecology and Washington Department of Fish and Wildlife Staff has been formed to guide this project. Doug Myers, Habitat Restoration Project Manager for the Puget Sound Action Team will serve as the Project Manager for the contract and coordinate meetings and correspondence between the Steering Committee and contractor.

### **Part 2–Project Objectives and Tasks**

The primary audience for the technical report will be local and state government shoreline permitting staff, public works engineers and private geo-engineering consultants and contractors.

### **Task 1 –Site Scoping and Data Identification**

In conjunction with the steering committee described above, compile information on durability of installed features, changes in shoreline profile or vegetation conditions since installation and property owner attitudes at existing sites where alternatives to shoreline armoring have been installed. The contractor will also develop, with help of the Steering Committee, measures of effectiveness that would be appropriate measures for this report and for ongoing monitoring based on physical shoreline attributes and landowner satisfaction. In order to conduct follow-up site visits and discussions with landowners about existing alternatives installations, the contractor should consult Ecology's Zelo, Shipman and Brennan document, which includes examples of alternative projects and some as-built drawings and photographs as well as contractor contacts. The report can be found at the following Web address:  
<http://www.ecy.wa.gov/biblio/0006012a.html>

### **Task 2 – Survey**

Compile information from project construction contractors and design consultants on effectiveness monitoring of projects and schedule no less than 15 site visits to projects not monitored by anyone. On-site evaluation activities will include both physical shoreline measurements including the establishment of vegetation and sediment accretion patterns (if adequate baseline information is available), as well as attitudes of property owners regarding the effectiveness, aesthetics and cost of the installation relative to standard armoring practices. A single site visit in late winter should be conducted on each project site to evaluate the site following the most exposed conditions.

### **Task 3 – Institutional Review**

Conduct a brief review of the institutional and other barriers experienced by homeowners or contractors or conveyed through the survey results. The review will be included in the report identified in Task 5.

### **Task 4 – Draft Report**

Contractor is to produce a draft technical report for review and comment by the Steering Committee. Contractor will review steering committee comments and may incorporate these comments into the final report at the contractor's discretion. All steering committee comments, however, shall appear in an appendix to the report with a description of whether the comment was incorporated and if not, why not.

### **Task 5 – Final Technical Report**

The contractor shall produce the final technical report, which shall include the standard site profile for each site according to Task 1. This may include color photos, beach profiles, homeowner testimonials or other evidence of selected project sites. The final report shall also illustrate the "best" and "worst" examples of project effectiveness.

### **Part 3–Deliverables and Timelines**

The period of performance of any contract awarded as a result of this RFP is tentatively scheduled to begin on or about January 10, 2006, and be in force through May 30, 2006 with possible amendments extending the period of performance. Certain deliverables or portions of certain deliverables will be due prior to the May 30, 2006 deadline; these include but may not be limited to:

- Updated contact list of alternative projects, their location and the contractors who constructed and/or monitored them. – 30 days after signing
- A proposed site visit list and permission from landowners. – 45 days after signing
- A survey instrument designed with input from the Steering Committee to characterize landowner opinions of the effectiveness of their alternative installation. – 45 days after signing
- Evaluation results including digital photos, physical shoreline measurements (profiles compared to pre-construction and immediate post-construction, if available), site descriptions designating whether evidence of erosion exists, etc. from no less than 15 and up to 25 case studies. – 120 days after signing
- A draft technical report with case study physical measurement and photographic findings, survey results, and brief analysis of institutional and other barriers as analyzed by contractor. – 150 days after signing
- The Project Manager will compile comments of the Steering Committee and return them to the contractor by 165 days after signing
- A final technical report in both PDF and MS word formats by 180 days after signing

The contractor and Action Team Project Manager will meet prior to implementing the project and define a more detailed and mutually agreeable timeline for completion of objectives and tasks.

### **Part 5- Budget**

Maximum total costs for this project will not exceed \$25,000.00 (Twenty-five thousand dollars).

## **Part 6–Submittal Guidelines**

The bidding is open to individuals or organizations, which meet the following minimum criteria:

- Bidder must be licensed to perform work in Washington State.
- Bidder must have at least three (3) non-Bidder owned customer references for whom the Bidder has provided similar services during the past thirty-six (36) months preceding the bid due date.

Bidders who do not meet these minimum qualifications, shall be deemed to be non-responsive and will not be evaluated and no score will be assigned.

Proposals should be no more than four pages in length, not including additional support materials, and should include:

1. Experience on comparable projects
2. Staff qualifications
3. Names, addresses and telephone numbers of three business references
4. Project work plan
5. Schedule to accomplish the project
6. Costs or fees
7. In-kind/Match funding

Proposals will be evaluated by the Action Team based on the response to the information requested above. All seven items must be addressed for the proposal to be considered responsive. **The deadline for submission of responses is 5:00 pm local time at the Puget Sound Action Team Office in Olympia, Washington on December 31, 2005.** LATE BIDS WILL NOT BE ACCEPTED AND WILL BE AUTOMATICALLY DISQUALIFIED FROM FURTHER CONSIDERATION. TIME EXTENSIONS WILL NOT BE GRANTED.

Proposals are to be mailed, faxed, e-mailed or hand-delivered to:

Puget Sound Action Team
Doug Myers
PO Box 40900
Olympia, WA 98504-0900
Phone: (360) 725-5451
Fax: (360) 725-5456
E-mail: dmyers@psat.wa.gov
Physical address: 210 11 <sup>th</sup> Ave. SW, Suite 401 Olympia, WA 98504-0900

Bidders assume the risk for the method of delivery chosen. The Action Team assumes no responsibility for delays caused by any delivery service.

The following weights will be assigned for bid evaluation purposes:

Experience/Staff Qualifications	45 points
References	40 points
In-kind/Matching Funds	10 points
Cost	5 points

The Action Team reserves the right at its sole discretion to reject any or all bids for any reason whatsoever prior to the execution of a contract. This RFP does not obligate the Action Team to contract for the services specified herein. The final selection, if any, will be the bid, which in the opinion of the Action Team best meets the requirements set forth in the RFP and is in the best interest of the state of Washington. The Action Team is not obligated to select the lowest priced bid. The Action Team shall not be responsible for any costs associated with a bidder's preparation of a bid in response to this RFP.

In submitting a bid in response to this RFP, the bidder agrees to accept the terms set forth in this RFP. The selected contractor will be required to sign a **cost reimbursable** personal service contract, including General Terms and Conditions (attached). Under no circumstances is the bidder to submit its own standard contract terms and conditions in response to this RFP.

Any requests for information about this project are to be directed to the Project Manager named above.

#### Project Funding Source

The federal funding for this project is provided by: **Environmental Protection Agency**

Funding Year: **2004**

Catalog of Federal Domestic Assistance Number: **66.456**

DEPARTMENT Funding Source: **Clean Water Act Section 320**

As a recipient of federal funds, the RECIPIENT must comply with the following federal regulations:

OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations  
OMB Circular A-133, Compliance Supplement  
OMB Circular A-122, Cost Principles for Non-Profit Organizations  
OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments  
OMB Circular A-110, Uniform Administrative Requirements for Non-Profit Organizations  
OMB Circular A-102, Uniform Administrative Requirements for States and Local Governments

These federal regulations can be found at: <http://www.whitehouse.gov/omb/circulars>

As a recipient of federal funds, the RECIPIENT will comply with CERTIFICATION REGARDING SUSPENSION, DEBARMENT, and Other RESPONSIBILITY MATTERS:

Federal Executive Order 12549 provides that Executive departments and agencies shall participate in a government-wide system for suspension and debarment. These departments and agencies have further passed this requirement onto their recipients and have provided pertinent regulations in the Codes of Federal Regulations. The Contractor certifies that the Contractor (or its principal officials) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Contract by any Federal department or agency. If the Contractor further subawards federal resources, the CONTRACTOR must ensure the same suspension/debarment requirements are followed.

## EXHIBIT A

### **GENERAL TERMS AND CONDITIONS**

A. **CONTRACT SCOPE & INTERPRETATION** - The contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract shall bind any of the parties. Any inconsistencies shall be resolved according to: first, applicable federal and state law; and second, the terms of this contract.

B. **COORDINATION WITH APPLICATION PROCESS** - All contractual terms, including the "General Terms and Conditions," were made available to the Contractor electronically and, if requested, on paper, as part of the funding application process. The Contractor affirms by his or her signature(s) that she or he has read and understands the terms of this document. The signatures of the parties shall indicate conclusively that the terms of this provision have been met.

C. **CONTRACTOR NOT EMPLOYEE OF THE AGENCY** - The parties intend that an independent contractor relationship will be created by this contract. The Contractor and his or her employees or agents performing under this contract are not employees or agents of the Agency. The Contractor will not hold himself/herself out as nor claim to be an officer or employee of the Agency or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor, consistent with the terms of this Contract.

D. **NON DISCRIMINATION** - During the performance of this contract, the Contractor shall comply with all federal and applicable state nondiscrimination laws, regulations and policies including, but not limited to, Title VII of the Civil Rights Act, the Americans with Disabilities Act, 42 USC 1201 and Washington's Law Against Discrimination, Chapter 49.60 RCW.

In the event the Contractor or Subcontractor does not, or refuses to, comply with any nondiscrimination law, regulation or policy, this agreement may be rescinded, cancelled or terminated per Section IV.S, Termination for Cause, in whole or in part, and the Contractor may be declared ineligible for future contracts with the Agency. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved using the procedure in Section IV.R, Disputes.

E. **INDEMNIFICATION** - To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the State, any of its agencies and all State officials, agents and employees, from and against all claims, including but not limited to, claims for injuries, property damage, or death arising out of or resulting from the performance of the contract or any related subcontract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor shall be required to indemnify, defend, and hold harmless the State only to the extent the claim is caused in whole or in part by negligent acts or omissions of Contractor.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

F. COVENANT AGAINST CONTINGENT FEES - The Contractor guarantees that it has not retained any person or agency to solicit or secure this contract by use of any agreement for commission, percentage, brokerage or contingent fee. The Contractor's employees or established agent, who are maintained for the purpose of securing business, are excluded from this covenant. The Agency has the right, in the event of any breach of this clause, to terminate this contract using the procedures laid out in Section IV.U, "Termination Procedure," without liability or, in its discretion, to deduct from the contract price, or recover by other means, the full amount of such commission, percentage, brokerage or contingent fee.

G. CONFLICT OF INTEREST - The Agency may terminate this contract according to Section IV.U, Termination Procedure, if it finds after a proper inquiry that there is a violation of the Executive Conflict of Interest Act, Chapter 42.18 RCW; Code of Ethics for Public Officers and Employees, Chapter 42.22 RCW; or any similar statute involving the Contractor in the procurement or performance of this contract.

In the event the Agency terminates this contract, the Agency is entitled to pursue the same remedies against the Contractor as it could pursue if the Contractor breached the contract. The rights and remedies provided for the Agency in this clause do not exclude, and are in addition to, any other rights and remedies provided by law. The facts upon which the Agency makes any determination under this clause may be reviewed as provided in Section IV.R, Disputes.

H. TREATMENT OF ASSETS - All reference to the Contractor under this clause includes any of his/her employees, agents or subcontractors.

1. The Agency retains title to all property furnished for use by the Contractor. Where the Contractor is entitled to be reimbursed for an item of cost under the terms of this contract, title to that property vests in the Agency upon delivery of the item. Title to other property, the cost of which is reimbursable to the Contractor under the contract, vests in the Agency upon (i) issuance for use in the performance of this contract, or (ii) commencement of use in the performance of this contract, or (iii) reimbursement of the property's cost by the Agency in whole or in part, whichever occurs first. Title to property, the cost of which was reimbursed to the Contractor under this agreement, then vests in the Contractor upon satisfactory fulfillment of the Contractor's obligations under this agreement.
2. Any Agency property furnished for use by the Contractor shall be used only for performance of this contract unless otherwise provided in writing.
3. The Contractor is responsible for any loss or damage to the Agency's property that results from the Contractor's negligence or from the failure to use sound management practices to maintain and administer that property.
4. The Contractor shall notify the Agency of any loss, destruction or damage to any Agency property, and shall take all reasonable steps to protect that property from further damage.
5. The Contractor shall surrender all Agency property, including that property the cost of which was reimbursed to the Contractor, prior to final settlement upon termination or cancellation of this contract.

I. NONASSIGNABILITY - Neither this contract, nor any claim arising under this contract, may be transferred or assigned by the Contractor without the Agency's prior written consent.

J. RETENTION AND AVAILABILITY OF RECORDS, DOCUMENTS AND REPORTS The Contractor shall maintain accounting practices, books, records, documents and other evidence of all direct and indirect costs of any nature expended in the performance of this contract. The Contractor shall retain such records for a period of six years from the date of final payment.



These records shall be subject at all reasonable times to inspection, review or audit by the Contract Administrator, the Agency, the Office of the State Auditor and any other federal and state officials authorized by law, regulation or contract.

K. SAFEGUARDING OF CLIENT INFORMATION - The Contractor shall not use or disclose any information concerning the Agency, or any information which may be classified as confidential pursuant to Chapter 42.17 RCW for any purpose not directly connected with the administration of this contract except (1) with prior written consent of the Agency or (2) as may be required by law.

L. OWNERSHIP OF DELIVERABLES, LICENSE TO USE - Data and other copyrightable materials that result from this Contract shall be owned by the Contractor. To the extent the materials delivered under this contract include intellectual property protected by copyright or trademark, Contractor grants Agency a license to use Deliverables as follows. Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, source codes, software and/or sound reproductions. The license shall be a nonexclusive, royalty-free and irrevocable license to reproduce, distribute, display, perform, sublicense and adapt any Deliverable, in whole or in part, for any and all purposes, in perpetuity, in any media now known or created in the future, within the State of Washington. The parties agree that the price paid under this Contract for the Deliverables and services contracted for, reflects the license granted in this clause.

Contractor represents and warrants that it owns all rights in the licensed material and agrees to indemnify the agency against any third party claims of copyright infringement. The Agency shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this contract. The Agency shall have the right to modify or remove any restrictive markings placed upon any Deliverable by the Contractor.

M. LICENSING, ACCREDITATION AND REGISTRATION STANDARDS - The Contractor shall comply with all applicable local, state and federal licensing, accreditation and registration standards and requirements necessary for the performance of this contract.

N. INDUSTRIAL INSURANCE COVERAGE - All individuals performing work under this Contract shall be covered by industrial insurance prior to performing work under this contract as required under Title 51.12 RCW. The Contractor shall provide or purchase industrial insurance coverage prior to performing work under this contract. The Agency will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Contractor, or any subcontractor or employee of the Contractor, or volunteer, which might arise under the industrial insurance laws during performance of duties and services under this contract.

O. RIGHT OF FACILITY INSPECTION - The Contractor shall provide right of access to its facilities to the Agency, or any of its officers, or to any other authorized agency or official of the State of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance and/or quality assurance under this contract.

P. PUBLICITY - The Contractor agrees to submit to the Agency all advertising and publicity matters which mention the Agency's name or contain language from which a connection to the Agency's name may, in the Agency's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the Agency's prior written consent.

Q. AMENDMENTS, MODIFICATIONS, AND WAIVER - Only the Agent or Agent's delegate by writing, whose delegation shall be made prior to the modification, shall have the express,

implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent or the Agent's delegate.

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of the contract unless stated to be such in writing and signed by the Agent as provided in this section.

R. DISPUTES - Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved, either party may request a dispute hearing with the Agency Chair. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal. The request for a hearing must:

1. Be in writing;
2. State the disputed issues;
3. State the relative positions of the parties;
4. State the Contractor's name, address and contact number; and
5. Be mailed to the Agent and the other party's (respondent's) Contract Administrator within three (3) working days after the parties agree they can not resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the agent and the requestor within five (5) working days. The agent shall review the written statements and reply in writing to both parties within ten (10) working days. The agent may extend this period if necessary by notifying the parties.

These requests must be mailed to Bradley L. Ack, Chair, Puget Sound Action Team, P.O. Box 40900, Olympia, Washington 98504-0900, within fifteen (15) days after either party receives notice of the issue(s) which she or he disputes.

S. TERMINATION FOR CAUSE - In the event the Agency determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the Agency has the right to suspend or terminate this Contract. Bases for such termination include, but are not limited to, failure to perform as specified in Sections II & III, Section IV.D and Section IV.G. The Agency shall notify the Contractor in writing of the need to take corrective action. The Contractor shall take corrective action within 30 days of the postmark of the notice, if this time period is available, or within whatever other reasonable time period the Agency specifies. The Agency may terminate the Contract if corrective action is not taken. The Agency reserves the right to suspend all or part of the Contract, withhold further payments or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Agency to terminate the Contract. A filing for bankruptcy by Contractor will be deemed a material breach and may result in immediate termination of this contract. In the event of termination, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

T. TERMINATION FOR CONVENIENCE - The termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the Agency provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law. Except as otherwise provided in this contract, the

Agency may, by two (2) days written notice, beginning on the postmark date, terminate this contract in whole or in part when it is in the best interests of the Agency. If this contract is so terminated, the Agency shall be liable only for payment in accordance with the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

U. TERMINATION PROCEDURE - Upon termination of this contract and in addition to any other rights provided in this contract, the Agency may require the Contractor to deliver to the Agency any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of Section IV.H, "Treatment of Assets," shall apply to any such property transfer.

The Agency shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Agency, and the amount agreed upon by the Contractor and the Agency for (a) completed work and services for which no separate price is stated, (b) partially completed work and services, (c) other property or services that are accepted by the Agency, and (d) the protection and preservation of property, unless the termination is for default, in which case the Agent shall determine the extent of the liability of the Agency. Failure to agree with such determination may be resolved by use of Section IV.R, Disputes. The Agency may withhold from any amounts due to the Contractor such sum as it determines to be necessary to protect the Agency against potential loss or liability.

The rights and remedies of the Agency provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Agency, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, goods, services or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;
3. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agency, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agency to the extent it may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the Agency and deliver in the manner, at the times and to the extent directed by the Agency any property which, if the contract has been completed, would have been required to be furnished to the Agency;
6. Complete performance of such part of the work as shall not have been terminated by the Agency; and
7. Take such action as may be necessary, or as the Agency may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Agency has or may acquire an interest.

V. GOVERNING LAW - This contract shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in the Superior Court of Thurston County.

W. SEVERABILITY - If any provision of this contract is held invalid, such invalidity shall not affect the other provisions of this contract that can be given effect without the invalid provision. Such remainder must conform to the requirements of applicable law and the fundamental purpose of this contract, and to this end the provisions of this contract are declared to be severable.

X. PRIVACY NOTICE - Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Agency or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

Y. RECAPTURE - In the event that the Contractor fails to expend funds under this contract in accordance with state laws and/or the provisions of this contract, the Agency reserves the right to recapture state funds in an amount equivalent to the extent of the noncompliance in addition to any other remedies available at law or in equity.

Such right of recapture shall exist for a period not to exceed six (6) years following contract termination. Repayment by the Contractor of funds under this recapture provision shall occur within thirty (30) days of demand. In the event that the Agency is required to institute legal proceedings to enforce the recapture provision, the Agency shall be entitled to its costs thereof, including attorneys' fees.

Z. PUBLIC DISCLOSURE ACT - Contractor acknowledges that the Agency is subject to RCW 42.17, the Public Disclosure Act, and that this contract shall be a public record as defined in RCW 42.17.250-.340. Any specific information that is claimed by the Contractor to be confidential or proprietary must be clearly identified as such by the Contractor. To the extent consistent with RCW 42.17, the Agency shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view the Contractor's information, the Agency will notify the Contractor of the request and the date that such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If the Contractor fails to obtain a court order enjoining disclosure, the Agency will release the requested information on the date specified.

AA. MINORITY AND WOMEN'S BUSINESS ENTERPRISE - In accordance with legislative findings and policies set forth in RCW 39.19 the Agency encourages participation by Minority and Women's Business Enterprise firms certified by OMWBE. Voluntary goals for participation may be set forth in Section III, Scope of Work. If any part of the contract, including the supply of materials or equipment, is actually subcontracted during the contract, then prior to final acceptance the contractor is encouraged to submit a statement of participation indicating what MWBE's were used and the dollar amount of their subcontracts. However, no preference will be used in the evaluation of funding applications, no minimum level of MWBE participation shall be required as a condition of receiving an award, and applications will not be rejected or considered non-responsive on that basis. There shall be no sanctions under this section.